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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/356,771	07/16/99	PORCELLI	J 1310-2

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 EXAMINER

MORRISON, N

ART UNIT	PAPER NUMBER
3632	<i>5</i>

DATE MAILED: 07/20/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)
	09/356,771	PORCELLI, JOSEPH E.
	Examiner	Art Unit
	Naschica S Morrison	3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 4/20/01.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 18-23 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 18-23 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.

4) Interview Summary (PTO-413) Paper No(s). _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____

DETAILED ACTION

This is the second Office Action for serial number 09/356,771, Car and Truck Beverage Holder, filed on July 16, 1999. Claims 18-23 are pending.

Claim Objections

Claims 18 and 21 are objected to because of the following informalities: in Claim 18, line 1, insert -- : -- after "comprising". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18, 19, and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 18, line 4, "said resilient" should be -- said plurality of resilient-- to provide sufficient antecedent basis for this limitation in the claim. Regarding line 6, "the opening" should be --the rectangular opening-- and "said fingers" should be --said plurality of resilient fingers-- to provide sufficient antecedent basis for these limitations in the claim.

Claims 18 and 21 recite the limitation "the point of the V" in lines 5-6. There is insufficient antecedent basis for this limitation in the claims.

Regarding Claim 19, line 2 "said fingers" should be -- said plurality of fingers-- to provide sufficient antecedent basis for this limitation in the claim.

Claim 19 recites the limitation "said hook member" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 21, line 4, "said resilient" should be -- said plurality of resilient-- to provide sufficient antecedent basis for this limitation in the claim. Regarding line 6, "the opening" should be --the rectangular opening-- and "said fingers" should be --said plurality of resilient fingers-- to provide sufficient antecedent basis for these limitations in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,938,160 to Hartmann et al. (Hartmann) in view of U.S. Patent Des. 355,336 to Dickey et al. (Dickey), and further in view of U.S. Patent 5,860,559 to Wang. Regarding claims 18-20, Hartmann discloses a plastic beverage container holder comprising: a basket (14) defining an opening, a plurality of resilient fingers (16) coupled to the basket and extending inwardly toward the opening, and a U-shaped hook (18) attached to and extending above the basket. Hartmann does not disclose the

basket and opening being rectangular. Dickey discloses a container holder (Fig. 1) comprising a rectangular basket defining a rectangular opening. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the basket to be rectangular in shape because one would have been motivated to provide a beverage container holder for rectangular beverage containers as taught by Dickey (Claim, lines 1-2). Hartmann also fails to disclose the fingers having a V-shaped profile. Wang discloses a beverage container holder (Fig. 2) including a plurality of springy retaining members (2) having a V-shaped profile when viewed in a vertical plane with the point of the V extending towards a central opening. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the holder by including V-shaped retaining members because one would have been motivated to provide a means for securely gripping the cup while also permitting easy removal as taught by Wang (col. 2, lines 7-22). Regarding claim 19, Hartmann in view of Dickey and further in view of Wang does not disclose the holder being a single unitary member. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the holder to be unitary because one would have been motivated to reduce assembly time and manufacturing costs.

Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,673,891 to Fujihara et al. (Fujihara) in view of Dickey in view of Hartmann. Regarding claims 21 and 23, Fujihara discloses a beverage container holder comprising: a rectangular tray (5) having two openings (6,7), each opening having a resilient finger (8,9) with a V-shaped profile (Fig. 2) when viewed in a vertical plane

(upon being deflected by a beverage container) with the point of the V extending towards the center of the opening, and a supporting member (13) rotatably coupled to the tray and pivotable into a position located below the opening (Fig. 1a). Fujihara does not disclose the openings being rectangular. Dickey discloses a beverage container holder including a rectangular opening. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the opening to be rectangular in shape because one would have been motivated to provide a holder for rectangular beverage containers as taught by Dickey (Claim, lines 1-2). Fujihara also fails to disclose a plurality of fingers extending towards a single opening. Hartmann discloses the beverage container holder as applied above which includes a plurality of fingers extending towards a single opening. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the holder openings by including a plurality of fingers therein because one would have been motivated to provide additional support of the beverage container as inherently taught by Hartmann.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fujihara in view of Dickey in view of Hartmann, and further in view of U.S. Patent 4,530,480 to Pratt. Regarding claim 22, Fujihara in view of Dickey in view of Hartmann discloses the beverage container holder as applied above, but does not disclose the supporting member (13) being spring biased into the position located below the opening. Pratt discloses a container holder (Fig. 2) having a spring means (60) for biasing a support member (44) into a lowered position. It would have been obvious to one of ordinary skill

in the art at the time the invention was made to have modified the holder by including a spring means because one would have been motivated to permit removal of the beverage container and position the support member for collapse for storage as taught by Pratt (col. 5, lines 2-11).

Response to Arguments

Applicant's arguments with respect to claims 18-23 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

4949381 to Buist discloses a cup holder.
4928865 to Lorence et al. discloses a beverage container holder.
5839711 to Bieck et al. discloses a beverage container holder.
5860630 to Wildley et al. discloses a beverage container holder.
JP411118024 to Nanba et al. discloses a cup holder.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. The Examiner can be normally reached Monday through Friday from 7:00 A.M. to 4:30 P.M. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine telephone number for the Technology Center is (703) 305-3597 or (703) 305-3598 (formal amendments) or (703) 308-3519 (informal amendments/communications).

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 308-2168.


Naschica S. Morrison
Patent Examiner
Art Unit 3632
7/13/01

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